

## § 230.150

### § 230.150 Definition of “commission or other remuneration” in section 3(a)(9), for certain transactions.

The term *commission or other remuneration* in section 3(a)(9) of the Act shall not include payments made by the issuer, directly or indirectly, to its security holders in connection with an exchange of securities for outstanding securities, when such payments are part of the terms of the offer of exchange.

[2 FR 1076, May 26, 1937]

### § 230.151 Safe harbor definition of certain “annuity contracts or optional annuity contracts” within the meaning of section 3(a)(8).

(a) Any annuity contract or optional annuity contract (a *contract*) shall be deemed to be within the provisions of section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), *Provided*, That

(1) The annuity or optional annuity contract is issued by a corporation (the *insurer*) subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(2) The insurer assumes the investment risk under the contract as prescribed in paragraph (b) of this section; and

(3) The contract is not marketed primarily as an investment.

(b) The insurer shall be deemed to assume the investment risk under the contract if:

(1) The value of the contract does not vary according to the investment experience of a separate account;

(2) The insurer for the life of the contract

(i) Guarantees the principal amount of purchase payments and interest credited thereto, less any deduction (without regard to its timing) for sales, administrative or other expenses or charges; and

(ii) Credits a specified rate of interest (as defined in paragraph (c) of this section) to net purchase payments and interest credited thereto; and

(3) The insurer guarantees that the rate of any interest to be credited in excess of that described in paragraph (b)(2)(ii) of this section will not be

## 17 CFR Ch. II (4–1–03 Edition)

modified more frequently than once per year.

(c) The term *specified rate of interest*, as used in paragraph (b)(2)(ii) of this section, means a rate of interest under the contract that is at least equal to the minimum rate required to be credited by the relevant nonforfeiture law in the jurisdiction in which the contract is issued. If that jurisdiction does not have any applicable nonforfeiture law at the time the contract is issued (or if the minimum rate applicable to an existing contract is no longer mandated in that jurisdiction), the specified rate under the contract must at least be equal to the minimum rate then required for individual annuity contracts by the NAIC Standard Nonforfeiture Law.

[51 FR 20262, June 4, 1986]

### § 230.152 Definition of “transactions by an issuer not involving any public offering” in section 4(2), for certain transactions.

The phrase *transactions by an issuer not involving any public offering* in section 4(2) (48 Stat. 77, sec. 203(a), 48 Stat. 906; 15 U.S.C. 77d) shall be deemed to apply to transactions not involving any public offering at the time of said transactions although subsequently thereto the issuer decides to make a public offering and/or files a registration statement.

[2 FR 1076, May 26, 1937, as amended at 30 FR 2022, Feb. 13, 1965]

CROSS REFERENCE: For regulations relating to registration statement, see §§ 230.400–230.494.

### § 230.152a Offer or sale of certain fractional interests.

Any offer or sale of a security, evidenced by a scrip certificate, order form or similar document which represents a fractional interest in a share of stock or similar security shall be deemed a transaction by a person other than an issuer, underwriter or dealer, within the meaning of section 4(1) of the act, if the fractional interest (a) resulted from a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction, and (b)

## Securities and Exchange Commission

## § 230.153b

is offered or sold pursuant to arrangements for the purchase and sale of fractional interests among the person entitled to such fractional interests for the purpose of combining such interests into whole shares, and for the sale of such number of whole shares as may be necessary to compensate security holders for any remaining fractional interests not so combined, notwithstanding that the issuer or an affiliate of the issuer may act on behalf of or as agent for the security holders in effecting such transactions.

(Sec. 4, 48 Stat. 77; 15 U.S.C. 77d)

[30 FR 2657, Mar. 2, 1965]

### **§ 230.153 Definition of “preceded by a prospectus”, as used in section 5(b)(2), in relation to certain transactions.**

(a) The term *preceded by a prospectus*, as used in section 5(b)(2) of the Securities Act of 1933 (48 Stat. 77; 15 U.S.C. 77e(b)(2), as amended, in respect of any requirement of delivery of a prospectus to a member of a national securities exchange, on account of a transaction in a security effected on such exchange, shall mean delivery, prior to such transaction, of copies of a prospectus descriptive of such security and meeting the requirements of section 10(a) (48 Stat. 81, sec. 205, 48 Stat. 906; 15 U.S.C. 77j) to such exchange by the issuer or any underwriter, for the purpose of redelivery to members of such exchange upon their request: *Provided*, That as to any transaction occurring prior to the expiration of forty days after the effective date of the registration statement or the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (exclusive of the time during which a stop order issued under section 8 is in effect as to such security):

(1) Such exchange shall theretofore have requested of the issuer or, if such requests shall not have been compiled with, of a *principal underwriter* (as that term is defined in § 230.405), from time to time, such number of copies of such prospectus as may have appeared reasonably necessary to comply with the requests of its members, and shall have

delivered from its supply on hand a copy to any member theretofore making a written request therefor, and

(2) The issuer or any underwriter shall theretofore have furnished such exchange with such reasonable number of copies of such prospectus as may have been requested by the exchange for the purpose stated above.

(b) The term *national securities exchange*, as used herein shall mean a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934 (48 Stat. 881; 15 U.S.C. Chapter 2B), as amended.

[2 FR 1076, May 26, 1937, as amended at 19 FR 6737, Oct. 20, 1954]

CROSS REFERENCES: For the rules and regulations under the Securities Exchange Act of 1934, see part 240 of this chapter. For general requirements as to prospectuses, see §§ 230.400–230.434a.

### **§ 230.153a Definition of “preceded by a prospectus” as used in section 5(b)(2) of the Act, in relation to certain transactions requiring approval of security holders.**

The term *preceded by a prospectus*, as used in section 5(b)(2) of the Act with respect to any requirement for the delivery of a prospectus to security holders of a corporation or other person, in connection with transactions of the character specified in paragraph (a) of § 230.145, shall mean the delivery of a prospectus:

(a) Prior to the vote of security holders on such transactions; or,

(b) With respect to actions taken by consent, prior to the earliest date on which the corporate action may be taken; to all security holders of record of such corporation or other person, entitled to vote on or consent to the proposed transaction, at their address of record on the transfer records of the corporation or other person.

[37 FR 23636, Nov. 7, 1972]

### **§ 230.153b Definition of “preceded by a prospectus”, as used in section 5(b)(2), in connection with certain transactions in standardized options.**

The term *preceded by a prospectus*, as used in section 5(b)(2) of the Act with